

AMENDED IN SENATE AUGUST 22, 2006

AMENDED IN SENATE AUGUST 14, 2006

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN ASSEMBLY APRIL 19, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1965

Introduced by Assembly Members Lieu and Saldana
(Principal coauthor: Assembly Member Calderon)
(Coauthor: Assembly Member Laird Coauthors: Assembly
Members Jones and Laird)

February 6, 2006

An act to add and repeal Chapter 2.5 (commencing with Section 23040) of Division 10 of the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1965, as amended, Lieu. Deferred deposit transactions: military borrowers.

Existing law provides certain protections for members of the National Guard ordered into active state service by the Governor or active federal service by the President of the United States for emergency purposes, and for reservists called to active duty, as specified.

Existing law, the California Deferred Deposit Transaction Law (CDDTL), provides for the licensure and regulation of persons making

deferred deposit transactions, which are transactions whereby a person defers depositing a customer's personal check until a specific date pursuant to a written agreement. Under existing law, a violation of the CDDTL is punishable as a crime.

This bill would authorize a military borrower, as defined, to defer payments and to enter into a repayment plan with respect to deferred deposit transactions, as provided. The bill would prohibit licensees making deferred deposit transactions from engaging in specified practices with respect to those deferred deposit transactions and would require those persons, before entering into such a transaction with a military borrower, to provide a statement to the borrower explaining his or her rights, as specified. The bill would require the Commissioner of Corporations to enact regulations to implement these provisions and to give notice to licensees, as specified. The bill would provide that a licensee who does not enter into deferred deposit transactions with service members shall not be guilty of or liable for discrimination, as specified. The bill would repeal these provisions on January 1, 2009, unless that date is extended by a subsequently enacted statute. Because the bill would specify additional requirements under the CDDTL, the violation of which would be punishable as a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.5 (commencing with Section 23040)
2 is added to Division 10 of the Financial Code, to read:

3
4 CHAPTER 2.5. MILITARY BORROWERS

5
6 23040. The following definitions apply for purposes of this
7 chapter:

1 (a) "Date of deployment" means the date that the service
2 member is called to duty in a combat or combat support position.
3 It does not include temporary duty for the sole purpose of
4 training or processing or a permanent change of station.

5 (b) "Military borrower" means a service member or the spouse
6 of a service member who has used the service member's income
7 to enter into a deferred deposit transaction.

8 (c) "Service member" means all of the following individuals:

9 (1) Active duty members of the Armed Forces of the United
10 States.

11 (2) Officers and enlisted members of the State Militia called or
12 ordered into active state service for a period of 30 days or more
13 by the Governor pursuant to the provisions of Section 128, 143,
14 or 146 of the Military and Veterans Code or into active federal
15 service for a period of 30 days or more by the President of the
16 United States pursuant to Title 10 or Title 32 of the United States
17 Code.

18 (3) Reservists of the United States Military Reserve who have
19 been called to full-time active duty for a period of 30 days or
20 more.

21 23041. (a) A licensee shall not take any of the following
22 actions with respect to a deferred deposit transaction marketed to
23 a service member or a service member's spouse or entered into
24 with a military borrower:

25 (1) Collect on a deferred deposit transaction entered into by
26 the military borrower by garnishing any of the service member's
27 military pay.

28 (2) Attempt to collect on a deferred deposit transaction by
29 contacting the military chain of command, unless the contact is
30 made in writing as a notice for informational purposes only.

31 (3) Make a deferred deposit transaction from a specific
32 location to a person that the licensee knows is a service member
33 or the spouse of a service member when the service member's
34 ~~commander~~ *regional command authority* has notified the licensee
35 in writing that the specific location is designated off-limits to
36 military personnel under his or her command.

37 (4) Directly market deferred deposit transactions to a service
38 member or the spouse of a service member in a manner that
39 suggests a military affiliation with a deferred deposit transaction
40 product.

1 (5) Require a military borrower to waive any rights or
2 procedures as a condition of a deferred deposit transaction,
3 including the borrower's right to file and pursue a civil action
4 pursuant to Section 23064.

5 (6) Refuse to transact with a military borrower or otherwise
6 discriminate against a military borrower because he or she
7 refuses to waive any rights or procedures, including the rights
8 and procedures provided for in this division.

9 (b) A waiver of rights or procedures by a military borrower
10 shall be knowing and voluntary and shall not be a condition of a
11 deferred deposit transaction. Any waiver, including an agreement
12 to arbitrate a claim under the deferred deposit transaction law or
13 any other law relating to the deferred deposit transaction, that is
14 required as a condition of the deferred deposit transaction in
15 violation of paragraph (5) or (6) of subdivision (a) shall be
16 deemed unconscionable.

17 (c) A licensee that enters into a deferred deposit transaction
18 with a military borrower has the burden of proving that any
19 waiver of rights or procedures by the military borrower with
20 respect to the transaction, including any agreement to arbitrate a
21 claim, was knowingly and voluntarily made by the military
22 borrower and was not a condition of the transaction. ~~A licensee~~
23 ~~shall be deemed to have met this burden if it can prove both of~~
24 ~~the following:~~

25 ~~(1) The customer had a clearly disclosed right to reject the~~
26 ~~agreement to arbitrate a claim under this division or under any~~
27 ~~other law relating to the transaction in accordance with the terms~~
28 ~~of the agreement to arbitrate.~~

29 ~~(2) The exercise of the right by the customer to reject the~~
30 ~~agreement to arbitrate did not affect any other term of the~~
31 ~~transaction.~~

32 *(d) The exercise by a military borrower of the right to refuse*
33 *to waive legal rights or procedures, including rejection of the*
34 *agreement to arbitrate, shall not affect any other term of the*
35 *transaction.*

36 23042. (a) Notwithstanding any other provision of law, a
37 military borrower may defer payments on a deferred deposit
38 transaction he or she entered into prior to the date of the service
39 member's deployment.

1 (b) To defer payment on a deferred deposit transaction, the
2 military borrower or his or her representative shall deliver to the
3 licensee a letter signed by the military borrower or his or her
4 representative requesting deferral of payment on the deferred
5 deposit transaction, providing the expected duration of
6 deployment and acknowledging the military borrower's
7 responsibilities for repayment of the amount owing on the
8 deferred deposit transaction.

9 (c) Pursuant to subdivision (b) of Section 23036, the licensee
10 shall not charge an additional fee, interest, finance charge, or any
11 other charge for deferral of payment on the deferred deposit
12 transaction during the period of deployment and for 30 days
13 following the service member's return from deployment.

14 (d) The payment on the deferred deposit transaction shall be
15 deferred for the duration of the service member's deployment
16 and shall apply only to a deferred deposit transaction entered into
17 by the military borrower prior to the date of deployment. The
18 amount of the payment deferred under this section shall be due in
19 full 30 days after the date of the service member's return from
20 deployment, unless the military borrower requests a repayment
21 plan pursuant to Section 23043.

22 23043. (a) The licensee shall grant a military borrower a
23 repayment plan upon written request by the military borrower.

24 (b) The repayment plan shall have the following provisions:

25 (1) A term of, at minimum, 120 days.

26 (2) At least three payments, consisting of an initial payment
27 due not sooner than 13 days following execution of the plan or
28 on or after the military borrower's pay date, with all subsequent
29 payments due at least 13 days apart from each other or on or after
30 the military borrower's pay date. A licensee may require that the
31 payment dates in the repayment plan coincide with the service
32 member's pay dates.

33 (3) All payments shall be approximately equal in amount,
34 unless otherwise agreed to by the licensee and the military
35 borrower.

36 (c) Pursuant to subdivision (b) of Section 23036, the licensee
37 shall not charge the military borrower directly or indirectly any
38 finance charges, interest, fees, or other charges for requesting or
39 using a repayment plan.

(d) Performance of the terms of the repayment plan extinguishes the military borrower's obligation on the deferred deposit transaction.

(e) Upon the military borrower making all payments required under the repayment plan, the licensee shall return the uncashed check originally used as the basis for the deferred deposit transaction to the military borrower.

(f) If the military borrower fails to make a payment under the repayment plan within five days of its due date, the licensee may initiate efforts to collect the total amount owing under the repayment plan.

(g) The military borrower or the military borrower's representative may prepay any amount due under the repayment plan at any time without charge or penalty.

(h) Notwithstanding any other provision of law, a licensee shall not make a deferred deposit transaction with a military borrower in either of the following circumstances:

(1) When the licensee knows that the military borrower has a repayment plan with another licensee with remaining payments due under it.

(2) Within 14 days of the military borrower's payment of all payments required under the repayment plan with the licensee.

(i) A repayment plan granted to a military borrower under this section is an extension of payment terms under the original deferred deposit transaction agreement and is governed by this section and this division. A repayment plan is not a loan and is not subject to any other law or regulation governing the granting of credit.

23044. (a) Before engaging in a deferred deposit transaction with a military borrower, a licensee shall provide to the military borrower a written statement in at least 10-point type that clearly and conspicuously states the prohibited practices and ~~special~~ rights a military borrower is afforded by law. The statement shall include, but is not limited to, information describing the following matters:

(1) The opportunity for deferral of payments on a deferred deposit transaction under Section 23042.

(2) The ~~special~~ rights to a repayment plan under Section 23043.

1 (3) The right of a military borrower to refuse to *waive any*
2 *legal rights or procedures, including the right to refuse to agree*
3 *to binding arbitration with respect to any deferred deposit*
4 *transaction into which he or she enters.*

5 (4) The inability of a licensee to charge any additional fee,
6 interest, finance charge, or other charge of any kind as a
7 condition of granting a repayment plan or during the period of
8 the repayment plan.

9 (b) The statement required by subdivision (a) shall include the
10 following:

11 ~~“THE SIGNING OF A REQUIREMENT FOR BINDING~~
12 ~~ARBITRATION IS VOLUNTARY AND IS NOT A~~
13 ~~CONDITION OF THIS AGREEMENT. BEFORE SIGNING~~
14 ~~ANY YOU HAVE THE RIGHT TO REFUSE TO SIGN AN~~
15 ~~AGREEMENT THAT WAIVES YOUR LEGAL RIGHTS OR~~
16 ~~PROCEDURES, INCLUDING THE REQUIREMENT FOR~~
17 ~~BINDING ARBITRATION. IF YOU DO NOT AGREE TO WAIVE~~
18 ~~YOUR RIGHTS, THE REST OF THIS AGREEMENT WILL NOT~~
19 ~~BE AFFECTED. BEFORE SIGNING ANY AGREEMENT THAT~~
20 ~~WAIVES YOUR LEGAL RIGHTS OR PROCEDURES,~~
21 ~~INCLUDING THE REQUIREMENT FOR BINDING~~
22 ~~ARBITRATION—AGREEMENT, OR THIS AGREEMENT,~~
23 ~~YOU SHOULD CONSULT A FINANCIAL COUNSELOR OR~~
24 ~~ADVISOR AT YOUR MILITARY COMMAND.”~~

25 23044.2. The commissioner shall enact regulations specifying
26 the content of any statement required under this chapter. The
27 commissioner shall also mail ~~notices~~ *a notice* to licensees
28 informing them of changes in the law ~~regarding deferred deposit~~
29 ~~transactions and service members~~ *resulting from the enactment of*
30 *this chapter.*

31 23044.3. A licensee that does not market deferred deposit
32 transactions to, or enter into those transactions with, service
33 members shall not be in violation of Section 394 of the Military
34 and Veterans Code.

35 23044.4. All other provisions of this division shall apply to
36 this chapter. *If any provision of this chapter is held to be invalid,*
37 *that invalidity shall not affect any other provision of this chapter.*

38 23044.5. This chapter shall remain in effect only until
39 January 1, 2009, and as of that date is repealed, unless a later

1 enacted statute, that is enacted before January 1, 2009, deletes or
2 extends that date.

3 23044.6. Nothing in this chapter shall preclude the
4 application or enforcement of a federal law or regulation that
5 provides alternative protections, *that are greater than those*
6 *provided in this chapter*, to a military borrower.

7 SEC. 2. It is the intent of the Legislature in enacting Chapter
8 2.5 (commencing with Section 23040) of Division 10 of the
9 Financial Code not to hamper efforts by the federal government
10 to address the problem of payday lending to the military.

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the
16 penalty for a crime or infraction, within the meaning of Section
17 17556 of the Government Code, or changes the definition of a
18 crime within the meaning of Section 6 of Article XIII B of the
19 California Constitution.